

Before the
Federal Communications Commission
Washington, D.C. 20554

2001 OCT -9 A 11: 17

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Washington and Watkinsville, Georgia))

RECEIVED
MM Docket No. 01-281 /
RM-10287

NOTICE OF PROPOSED RULE MAKING

Adopted: September 26, 2001

Released: October 5, 2001

Comment Date: November 26, 2001

Reply Comment Date: December 11, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a petition for rule making filed on behalf of Southern Broadcasting Companies, Inc. ("Southern"), which has recently received Commission approval to acquire the license of Station WXKT(FM), Channel 261A, Washington, Georgia.¹ Southern seeks to amend the FM Table of Allotments by reallocating Channel 261A from Washington to Watkinsville, Georgia and modifying Station WXKT's authorization accordingly.

2. Southern seeks to invoke the provisions of Section 1.420(i) of the Commission's rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.² In support of its proposal, Southern explains that the requested reallocation from Washington to Watkinsville is mutually exclusive with WXKT's existing authorization. Further, Southern states that

¹ At the time that the petition for rule making was filed, Cumulus Licensing Corp. was the licensee of Station WXKT. An application (File No. BALH-20010713AAP) had been filed seeking Commission consent to the assignment of that license to Southern. The Commission granted that application on August 29, 2001. Southern notes that the reallocation of Station WXKT to Watkinsville will result in the overlap of the principal community contours of other FM stations in which the principals of Southern have attributable interests. Nevertheless, Southern states that if Channel 261A is allotted to Watkinsville, Southern will make an appropriate showing of compliance with Section 73.3555 of the Rules (the multiple ownership rule concerning broadcast interests) at the application stage.

² See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

the town of Watkinsville was founded in 1806, has a population of 1,600 (1990 U.S. Census), and possesses sufficient characteristics to qualify as a "community" entitled to an FM allotment pursuant to Section 307(b) of the Communications Act of 1934, as amended ("the Act.").

3. Southern asserts that the adoption of its proposal will result in a preferential arrangement of allotments consistent with the Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1992),³ by providing Watkinsville with its first local aural transmission service [priority (3)], whereas retaining the channel in Washington would result in two local aural transmission services in Washington [priority (4)]. Our engineering staff finds that the gain area resulting from reallocating Channel 261A to Watkinsville contains 130,567 people, which represents a net gain of 111,798 people. The loss area resulting from the reallocation of Channel 261A to Watkinsville has 18,769 persons. Both the gain and loss areas encompass land area of 2,446 square kilometers. The predicted loss area has several sections that would receive less than five full-time reception services. An area containing 4,190 people and covering 706 square kilometers would receive four such services, while an area containing 6,849 persons and covering 521 square kilometers would receive only three such services. An area containing 3,114 people and covering 426 square kilometers would receive only two such services, while an area containing 618 persons and covering 117 square kilometers would receive only one full-time service. In the gain area, there are a few very small sections that are presently receiving less than five full-time services, but none of these tiny areas are presently receiving less than two such services. We note that the reallocation of Channel 261A to Watkinsville would not deprive Washington of its sole local transmission outlet because Washington would continue to be served by Station WLOV(AM).

4. In accordance with Commission policy, if a rulemaking proponent intends to move its authorized facility to a community that is adjacent to an urbanized area and if its intended operation would place a city grade (70 dBu) signal over 50 percent or more of the urbanized area, the proponent is required to demonstrate that the intended city of license is sufficiently independent of the central city to justify a first local service preference.⁴ We recognize that Watkinsville is not located within an urbanized area. Nevertheless, the proposed facility for Channel 261A at Watkinsville would cover 56.6 percent of the Athens, Georgia, Urbanized Area with its 70 dBu contour. Therefore, Southern must provide additional information responsive to a Tuck analysis to determine whether Watkinsville is sufficiently independent of Athens to merit a first local service preference.⁵ In light of the foregoing, we believe that Southern's proposal warrants consideration since the allotment of Channel 261A to Watkinsville would provide a first local aural transmission service to Watkinsville without depriving Washington of all local aural transmission service.

5. Since Southern's reallocation request is consistent with the provisions of Section 1.420(i)

³ The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters [co-equal weight is given to priorities (2) and (3)].

⁴ See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995).

⁵ See Huntington Broadcasting Co. v. F.C.C., 192 F. 2d 33 (D.C. Cir. 1951), RKO General, Inc. ("KFRC"), 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988).

of the Commission's Rules, we shall propose to modify the authorization of Station WXKT(FM) without entertaining competing expressions of interest in the use of Channel 261A at Watkinsville, Georgia, or requiring Southern to demonstrate the availability of an additional equivalent channel for use by other parties.

6. Channel 261A can be allotted to Watkinsville, New York, consistent with the technical requirements of the Commission's Rules, at Southern's specified site, utilizing coordinates 33-52-19 NL and 83-15-19 WL. The transmitter site has a restriction of 14.3 kilometers (8.9 miles) east of Watkinsville.

7. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>Channel Nos.</u>		
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Washington, Georgia	261A	-----
Watkinsville, Georgia	--- ----	261A

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before November 26, 2001, and reply comments on or before December 11, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Southern's counsel, as follows:

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, D.C. 20016

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact R. Barthen Gorman, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's

Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.